



ΕΦΗΜΕΡΙΣ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ

ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

ΤΕΥΧΟΣ ΔΕΥΤΕΡΟ

Αρ. Φύλλου 1833

29 Ιουλίου 2013

ΑΠΟΦΑΣΕΙΣ

Αριθ. απόφ. 269/2013

Συμμόρφωση της ΡΑΕ κατά την παράγραφο 9 του άρθρου 36 της Οδηγίας 2009/73/ΕΚ με την από 16.5.2013 Απόφαση της Ευρωπαϊκής Επιτροπής υπ' αριθμ. C(2013)2949 final για την εξαίρεση του αγωγού TAP AG από τις διατάξεις των άρθρων 9, 32 και 41(6), (8) και (10) της Οδηγίας 2009/73/ΕΚ και τροποποίηση της υπ' αριθμ. 111/2013 Απόφασης της ΡΑΕ.

Η ΡΥΘΜΙΣΤΙΚΗ ΑΡΧΗ ΕΝΕΡΓΕΙΑΣ
(Τακτική Συνεδρίαση στις 12.6.2013)

Λαμβάνοντας υπόψη:

1. Τις διατάξεις του ν. 2773/1999 (ΦΕΚ Α' 286), όπως ισχύει.
2. Τις διατάξεις του ν. 3428/2005 (ΦΕΚ Α' 309), όπως ισχύει.
3. Τις διατάξεις του ν. 4001/2011 (ΦΕΚ Α' 179), όπως ισχύει.
4. Τις διατάξεις του ν. 2690/1999 «Κώδικας Διοικητικής Διαδικασίας» (ΦΕΚ Α' 45).
5. Τις διατάξεις του π.δ.139/2001 «Κανονισμός Εσωτερικής Λειτουργίας και Διαχείρισης της ΡΑΕ» (ΦΕΚ Α' 121).
6. Τις διατάξεις του άρθρου 36 της Οδηγίας 2009/73/ΕΚ (εφεξής «Οδηγία») και του Κανονισμού (ΕΚ) αριθ. 715/2009 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 13ης Ιουλίου 2009, σχετικά με τους όρους πρόσβασης στα δίκτυα μεταφοράς φυσικού αερίου και για την κατάργηση του κανονισμού (ΕΚ) αριθ. 1775/2005.
7. Το υπ' αριθμ. πρωτ. ΡΑΕ Ι-143197/31.08.2011, ΑΕΕΓ 22591/29.08.2011 και ΕΡΕ 478/1.09.2011 έγγραφο της εταιρείας με την επωνυμία TRANS ADRIATIC PIPELINE AG (εφεξής «TAP AG») με τίτλο «Υποβολή επικαιροποιημένου φακέλου επί αιτήσεως για την χορήγηση άδειας ανεξάρτητου συστήματος φυσικού αερίου σύμφωνα με το άρθρο 74 του ελληνικού νόμου 4001/2011 για τη λειτουργία των ενεργειακών αγορών ηλεκτρισμού και φυσικού αερίου για έρευνα παραγωγή και δίκτυα μεταφοράς υδρογονανθράκων και άλλες ρυθμίσεις και τον Κανονισμό Αδειών φυσικού αερίου (υπουργική απόφαση δ1/α/5815/19.04.2010)» στο οποίο περιλαμβάνεται αίτηση εξαίρεσης (εφεξής «Αίτηση Εξαίρεσης») κατά το άρθρο 36 της Οδηγίας, το οποίο υποβλήθηκε στη ΡΑΕ και

στις ρυθμιστικές αρχές ενέργειας Ιταλίας (Autorita per l'energia elettrica e il gas, εφεξής «ΑΕΕΓ») και Αλβανίας (Enti Rregullator I Energjise, εφεξής «ΕΡΕ»).

8. Τις υπ' αριθ. 111/2013 Απόφαση της ΡΑΕ (εφεξής «Ελληνική Απόφαση Εξαίρεσης»), 78/2013/R/GAS Απόφαση της ΑΕΕΓ και 27/2013 Απόφαση της ΕΡΕ (εφεξής «Αλβανική Απόφαση Εξαίρεσης») με κοινό τίτλο «Εξαίρεση της εταιρείας TAP AG από τις διατάξεις των άρθρων 9, 32 και 41(6), (8) και (10) της Οδηγίας 2009/73/ΕΚ για τον αγωγό Trans Adriatic Pipeline (TAP)».

9. Την από 13 Μαρτίου 2013 Απόφαση του Ιταλικού Υπουργείου Οικονομικής Ανάπτυξης (Ministero dello Sviluppo Economico, εφεξής «MSE») σχετικά με την Εξαίρεση της εταιρείας TAP AG από τις διατάξεις των άρθρων 9, 32 και 41(6), (8) και (10) της Οδηγίας 2009/73/ΕΚ για τον αγωγό Trans Adriatic Pipeline (TAP) (εφεξής «Ιταλική Απόφαση Εξαίρεσης TAP»).

10. Το γεγονός ότι η Ελληνική και η Ιταλική Απόφαση Εξαίρεσης κοινοποιήθηκαν στην Ευρωπαϊκή Επιτροπή στις 9 και 13 Μαρτίου 2013, αντιστοίχως, σύμφωνα με την παράγραφο 8 του άρθρου 36 της Οδηγίας (Αρ. πρωτ. ΡΑΕ Ο-54293/05.03.2013).

11. Το γεγονός ότι η Αλβανική Απόφαση Εξαίρεσης κοινοποιήθηκε στην Γραμματεία της Ενεργειακής Κοινότητας στις 6 Μαρτίου 2013, σύμφωνα με την παράγραφο 8 του άρθρου 36 της Οδηγίας, όπως αυτή προσαρμόστηκε με την Απόφαση 2011/02/MC-EnC του από 6 Οκτωβρίου 2011 Συμβουλίου της Ενεργειακής Κοινότητας.

12. Το γεγονός ότι αναπόσπαστο μέρος της Ελληνικής, Αλβανικής και Ιταλικής Απόφασης Εξαίρεσης κατά τα στοιχεία (8) και (9) ανωτέρω, αποτελεί το Προσάρτημα με τίτλο «Joint Opinion of the Energy Regulators on TAP AG's Exemption Application - Autorita per l'energia elettrica e il gas(Italy), Enti Rregullator I Energjise (Albania), Ρυθμιστική Αρχή Ενέργειας (Greece)» (εφεξής «Κοινή Γνώμη»).

13. Την από 14 Μαΐου 2013 υπ' αριθμ. 1/2013 γνώμη της Γραμματείας της Ενεργειακής Κοινότητας «on the exemption of the «TAP» interconnector from certain requirements under Directive 2009/73/EC by the Energy Regulatory Authority of Albania».

14. Την από 16 Μαΐου 2013 υπ' αριθμ. C(2013)2949 final Απόφαση της Ευρωπαϊκής Επιτροπής «On the exemption of the Trans Adriatic Pipeline from the requirements on third party access, tariff regulation and ownership unbundling

laid down in Articles 9, 32, 41(6), 41(8) and 41(10) of Directive 2009/73/EC», η οποία κοινοποιήθηκε στη ΠΑΕ με το υπ' αριθμ. SG-Greffe (2013) D/6884/17.5.2013 έγγραφο της Ε.Ε. (ΠΑΕ I-171793/24.5.2013).

Σκέφτηκε ως εξής:

Επειδή, στο άρθρο 36 της Οδηγίας 2009/73/ΕΚ, καθορίζονται οι όροι και η διαδικασία για την χορήγηση εξαίρεσης από το δικαίωμα πρόσβασης τρίτων σε νέες υποδομές φυσικού αερίου (διασυνδέσεις, εγκαταστάσεις Υ.Φ.Α. και εγκαταστάσεις αποθήκευσης φυσικού αερίου), η διαδικασία κοινοποίησης στην Ευρωπαϊκή Επιτροπή της Απόφασης Εξαίρεσης καθώς και η διαδικασία συμμόρφωσης της ρυθμιστικής αρχής με την αντίστοιχη απόφαση της Ευρωπαϊκής Επιτροπής. Ειδικότερα, σύμφωνα με άρθρο (36) της Οδηγίας ΕΚ/2009/73: « Άρθρο 36 Νέες υποδομές 1. Η κύρια νέα υποδομή φυσικού αερίου, δηλαδή οι διασυνδέσεις, το ΥΦΑ και οι εγκαταστάσεις αποθήκευσης, μπορεί, κατόπιν αιτήσεως, να εξαιρείται, για καθορισμένο χρονικό διάστημα, από τις διατάξεις των άρθρων 9, 32, 33 και 34 και του άρθρου 41 παράγραφοι 6, 8 και 10, υπό τους εξής όρους: α) η επένδυση πρέπει να ενισχύει, αφενός, τον ανταγωνισμό για την προμήθεια αερίου και, αφετέρου, την ασφάλεια του εφοδιασμού β) το ύψος του επενδυτικού κινδύνου πρέπει να είναι τέτοιο ώστε η επένδυση δεν θα πραγματοποιηθεί εάν δεν χορηγηθεί απαλλαγή γ) η υποδομή πρέπει να ανήκει σε φυσικό ή νομικό πρόσωπο διακριτό, τουλάχιστον από την άποψη της νομικής του προσωπικότητας, από τους διαχειριστές συστημάτων στα δίκτυα των οποίων θα κατασκευασθεί η εν λόγω υποδομή δ) πρέπει να επιβάλλονται τέλη στους χρήστες της εν λόγω υποδομής και ε) η χορήγηση απαλλαγής δεν πρέπει να αποβαίνει σε βάρος του ανταγωνισμού ή της αποτελεσματικής λειτουργίας της εσωτερικής αγοράς φυσικού αερίου, ή της αποτελεσματικής λειτουργίας του διεπόμενου από ρυθμιστικές διατάξεις συστήματος με το οποίο συνδέεται η υποδομή. 2. Η παράγραφος 1 ισχύει επίσης και σε περίπτωση σημαντικής αύξησης του δυναμικού ήδη υπάρχουσας υποδομής ή σε περίπτωση τροποποίησης ήδη υπάρχουσας υποδομής που έχουν ως αποτέλεσμα την ανάπτυξη νέων πηγών προμήθειας φυσικού αερίου. 3. Η ρυθμιστική αρχή που αναφέρεται στο κεφάλαιο VIII αποφασίζει, κατά περίπτωση, σχετικά με την εξαίρεση που αναφέρεται στις παραγράφους 1 και 2. 4. Εάν η εν λόγω υποδομή χωροθετείται στο έδαφος περισσότερων του ενός κρατών μελών, ο Οργανισμός μπορεί να υποβάλει συμβουλευτική γνώμη στις ρυθμιστικές αρχές των οικείων κρατών μελών, η οποία θα μπορούσε να αποτελέσει τη βάση για την απόφασή τους, εντός δύο μηνών από την ημερομηνία κατά την οποία ζητήθηκε η εξαίρεση από την τελευταία από τις ρυθμιστικές αυτές αρχές. Εάν όλες οι οικείες ρυθμιστικές αρχές καταλήξουν σε συμφωνία για την απόφαση εξαίρεσης εντός έξι μηνών, ενημερώνουν τον Οργανισμό για την απόφαση αυτή. Ο Οργανισμός ασκεί τα καθήκοντα που ανατίθενται στις ρυθμιστικές αρχές του οικείου κράτους μέλους από το παρόν άρθρο: α) εφόσον δεν κατέστη δυνατόν να επιτευχθεί συμφωνία όλων των οικείων ρυθμιστικών αρχών εντός έξι μηνών από την ημερομηνία που ζητήθηκε η εξαίρεση από την τελευταία εκ των δύο ρυθμιστικών αρχών ή β) κατόπιν κοινής αιτήσεως των

οικείων ρυθμιστικών αρχών. Όλες οι σχετικές ρυθμιστικές αρχές μπορούν να ζητούν από κοινού την παράταση της περιόδου που αναφέρεται στο στοιχείο α) του τρίτου εδαφίου για μέγιστο διάστημα τριών μηνών. 5. Προτού λάβει απόφαση, ο Οργανισμός διαβουλευείται με τις αρμόδιες ρυθμιστικές αρχές και τους αιτούντες. 6. Η εξαίρεση επιτρέπεται να καλύπτει το σύνολο ή μέρος του δυναμικού της νέας υποδομής ή της υφιστάμενης υποδομής με σημαντικά αυξημένο δυναμικό. Κατά τη λήψη απόφασης για τη χορήγηση εξαίρεσης, λαμβάνεται υπόψη, για κάθε περίπτωση χωριστά, η ανάγκη να επιβληθούν όροι όσον αφορά τη διάρκεια της εξαίρεσης και τη χωρίς διακρίσεις πρόσβαση στην υποδομή. Κατά τη λήψη της απόφασης σχετικά με τους εν λόγω όρους λαμβάνονται υπόψη κυρίως το πρόσθετο δυναμικό που πρόκειται να κατασκευασθεί ή η τροποποίηση του υπάρχοντος δυναμικού, ο χρονικός ορίζοντας του έργου και οι εθνικές περιστάσεις. Πριν από τη χορήγηση εξαίρεσης, η ρυθμιστική αρχή αποφασίζει τους κανόνες και τους μηχανισμούς για τη διαχείριση και την κατανομή δυναμικού. Σύμφωνα με τους κανόνες αυτούς πρέπει να απαιτείται να καλούνται όλοι οι δυνητικοί χρήστες της υποδομής να εκδηλώσουν ενδιαφέρον για μίσθωση δυναμικού, προτού γίνει η κατανομή δυναμικού στη νέα υποδομή, ακόμη και για ιδία χρήση. Η ρυθμιστική αρχή απαιτεί οι κανόνες διαχείρισης της συμφοράς να περιλαμβάνουν την υποχρέωση προσφοράς του αχρησιμοποίητου δυναμικού στην αγορά και οι χρήστες της υποδομής να έχουν το δικαίωμα να διαπραγματεύονται το δυναμικό που διαθέτουν βάσει συμβάσεων στη δευτερογενή αγορά. Κατά την αξιολόγηση των κριτηρίων που αναφέρονται στην παράγραφο 1 στοιχεία α), β) και ε), η ρυθμιστική αρχή λαμβάνει υπόψη τα αποτελέσματα της εν λόγω διαδικασίας κατανομής δυναμικού. Η απόφαση εξαίρεσης, συμπεριλαμβανομένων των όρων που αναφέρονται στο δεύτερο εδάφιο της παρούσας παραγράφου, αιτιολογείται δεόντως και δημοσιεύεται. 7. Κατά παρέκκλιση από την παράγραφο 3, τα κράτη μέλη μπορούν να προβλέπουν ότι η ρυθμιστική αρχή ή ο οργανισμός, ανάλογα με την περίπτωση, υποβάλλουν στον αρμόδιο φορέα του κράτους μέλους, για τη λήψη τυπικής απόφασης, τη γνώμη τους σχετικά με το αίτημα εξαίρεσης. Η γνώμη αυτή δημοσιεύεται μαζί με τη σχετική απόφαση. 8. Η ρυθμιστική αρχή διαβιβάζει αμελλητί στην Επιτροπή αντίγραφο κάθε αίτησης εξαίρεσης μόλις τη λάβει. Η απόφαση κοινοποιείται αμελλητί από την αρμόδια αρχή στην Επιτροπή, μαζί με όλες τις σχετικές με την εν λόγω απόφαση πληροφορίες. Οι πληροφορίες αυτές μπορούν να υποβάλλονται στην Επιτροπή συνολικά, ώστε να της επιτρέπουν να λάβει τεκμηριωμένη απόφαση. Ειδικότερα, οι πληροφορίες περιλαμβάνουν: α) τους λεπτομερείς λόγους βάσει των οποίων η ρυθμιστική αρχή ή το κράτος μέλος χορήγησε ή απέρριψε την απαλλαγή, μαζί με παραπομπή στην παράγραφο 1, συμπεριλαμβανομένου και του σχετικού σημείου ή σημείων της προαναφερθείσας παραγράφου επί των οποίων βασίστηκε η απόφαση αυτή, συμπεριλαμβανομένων των οικονομικών πληροφοριών που αιτιολογούν την ανάγκη απαλλαγής β) την ανάλυση η οποία διεξήχθη για τις επιπτώσεις της απαλλαγής στον ανταγωνισμό και στην αποτελεσματική λειτουργία της εσωτερικής αγοράς φυσικού

αερίου· γ) τους λόγους για τη χρονική περίοδο και το μερίδιο του συνολικού δυναμικού της υποδομής φυσικού αερίου για το οποίο χορηγείται η απαλλαγή· δ) σε περίπτωση που η εξαίρεση αφορά διασύνδεση, το αποτέλεσμα της διαβούλευσης με τις ενδιαφερόμενες ρυθμιστικές αρχές και ε) τη συμβολή της υποδομής στη διαφοροποίηση της προμήθειας φυσικού αερίου. 9. Εντός δύο μηνών από την ημέρα παραλαβής της σχετικής κοινοποίησης, η Επιτροπή μπορεί να εκδώσει απόφαση, με την οποία θα υποχρεώνεται η ρυθμιστική αρχή να τροποποιήσει ή να ανακαλέσει την απόφαση χορήγησης εξαίρεσης. Η δέσμευση προθεσμία είναι δυνατόν να παραταθεί κατά δύο μήνες, όταν ζητούνται συμπληρωματικές πληροφορίες από την Επιτροπή. Η εν λόγω συμπληρωματική προθεσμία αρχίζει από την επομένη της λήψης του συνόλου των πληροφοριών. Η αρχική δέσμευση προθεσμίας μπορεί επίσης να παραταθεί με τη συγκατάθεση τόσο της Επιτροπής όσο και της ρυθμιστικής αρχής. Εάν οι ζητούμενες πληροφορίες δεν παρασχεθούν εντός της οριζόμενης στην αίτηση προθεσμίας, η κοινοποίηση θεωρείται ότι έχει αποσυρθεί, εκτός εάν, πριν την παρέλευση της εν λόγω προθεσμίας, η προθεσμία παραταθεί με συγκατάθεση τόσο της Επιτροπής όσο και της ρυθμιστικής αρχής ή η ρυθμιστική αρχή ενημερώσει την Επιτροπή, με δεόντως αιτιολογημένη δήλωση, ότι θεωρεί την κοινοποίηση πλήρη. Η ρυθμιστική αρχή συμμορφώνεται εντός μηνός με την απόφαση της Επιτροπής να τροποποιήσει ή να ανακαλέσει την απόφαση εξαίρεσης και ενημερώνει σχετικά την Επιτροπή. Η Επιτροπή διαφυλάσσει τον εμπιστευτικό χαρακτήρα των εμπορικά ευαίσθητων πληροφοριών. Η έγκριση μιας απόφασης εξαίρεσης από την Επιτροπή παύει να ισχύει δύο έτη μετά την έκδοση της απόφασης, εάν έως τότε δεν έχει αρχίσει ακόμη η κατασκευή της υποδομής, και πέντε έτη μετά την έκδοση της απόφασης, εάν η υποδομή δεν έχει τεθεί σε λειτουργία, εκτός εάν η Επιτροπή αποφασίσει ότι η καθυστέρηση οφείλεται σε μείζονα εμπόδια που βρίσκονται πέρα από τον έλεγχο του προσώπου στο οποίο χορηγήθηκε η εξαίρεση. 10. Η Επιτροπή μπορεί να εκδώσει κατευθυντήριες γραμμές για την εφαρμογή των όρων που προβλέπει η παράγραφος 1 του παρόντος άρθρου για τον καθορισμό της ακολουθητέας διαδικασίας για την εφαρμογή των παραγράφων 3, 6, 8 και 9 του παρόντος άρθρου. Τα μέτρα αυτά, που αποσκοπούν στην τροποποίηση μη ουσιωδών στοιχείων της παρούσας οδηγίας διά της συμπληρώσεώς της, θεσπίζονται σύμφωνα με την κανονιστική διαδικασία με έλεγχο στην οποία παραπέμπει το άρθρο 51 παράγραφος 3.»

Επειδή, το άρθρο 36 της Οδηγίας προβλέπει ότι, σε περίπτωση που η εν λόγω υποδομή χωροθετείται στο έδαφος περισσότερων χωρών, η εξέταση της Αίτησης Εξαίρεσης και η οποιαδήποτε σχετική απόφαση θα πρέπει να λαμβάνεται σε συνεργασία με τις αρμόδιες εθνικές αρχές των εμπλεκόμενων Κρατών Μελών, στη συγκεκριμένη περίπτωση της Ιταλίας και της Ελλάδας.

Επειδή, κατά τα ανωτέρω, οι Ρυθμιστικές Αρχές Ιταλίας, Αλβανίας και Ελλάδας συνεργάστηκαν κατά το

χρονικό διάστημα από τον Μάρτιο 2012 έως τον Φεβρουάριο 2013 για την διαμόρφωση της Κοινής Γνώμης.

Επειδή, με την ως άνω, υπό στοιχείο (14) απόφασή της, η Ευρωπαϊκή Επιτροπή, σύμφωνα με τα οριζόμενα στην παράγραφο 9 του Άρθρου 36 της Οδηγίας, λαμβάνοντας υπόψη μεταξύ άλλων και την ως άνω υπό στοιχείο (13) γνώμη της Γραμματείας της Ενεργειακής Κοινότητας, ζήτησε από την ΡΑΕ και το ΜΣΕ να προβούν στη μεταβολή των όρων 4.1, 4.1.2, 4.1.3, 4.1.5, 4.1.6, 4.1.8, 4.1.10, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7.2, 4.7.4, 4.7.5, 4.7.10 και 4.9 του Μέρους με τίτλο («Part 4: Authorities Joint Opinion») της ως άνω υπό στοιχείο (12), Κοινής Γνώμης.

Επειδή, με την ως άνω, υπό στοιχείο (13), γνώμη της Γραμματείας της Ενεργειακής Κοινότητας εισηγήθηκε στην ΕΡΕ την μεταβολή των όρων 4.1.3, 4.1.6, 4.7.7 και 4.7.8 του Μέρους με τίτλο («Part 4: Authorities Joint Opinion») της Κοινής Γνώμης. Οι εν λόγω μεταβολές ως προς τους όρους 4.1.3, 4.1.6 έχουν ενσωματωθεί και στην υπό στοιχείο (14) απόφαση της Επιτροπής ενώ οι μεταβολές ως προς τους όρους 4.7.7 και 4.7.8 αφορούν ειδικά στην Αλβανία.

Επειδή, κατά τα ανωτέρω, οι Ρυθμιστικές Αρχές Ιταλίας, Αλβανίας και Ελλάδας συνεργάστηκαν κατά το χρονικό διάστημα Μαΐου-Ιουνίου 2013 για την τροποποίηση του Μέρους με τίτλο («Part 4: Authorities Joint Opinion») της Κοινής Γνώμης σύμφωνα με την ως άνω υπό στοιχείο (13) γνώμη της Γραμματείας της Ενεργειακής Κοινότητας και την ως άνω υπό στοιχείο (14) Απόφαση της Ευρωπαϊκής Επιτροπής και διαπίστωσαν ότι απαιτείται η ενσωμάτωση όλων των αιτούμενων μεταβολών της Ευρωπαϊκής Επιτροπής και της Γραμματείας της Ενεργειακής Κοινότητας σε ένα κοινό κείμενο, ώστε να επιτευχθεί η απαιτούμενη εναρμονισμένη ρυθμιστική προσέγγιση στο ζήτημα της αιτούμενης Εξαίρεσης.

Για τους παραπάνω λόγους, αποφασίζει:

1. Την έγκριση του κειμένου με τίτλο «Final Joint Opinion of the Energy Regulators on TAP AG's Exemption Application: Autorita per l'energia elettrica e il gas (Italy), Enti Regulatori Energetici (Albania), Ρυθμιστική Αρχή Ενέργειας (Greece)» το οποίο προσαρτάται στην παρούσα Απόφαση ως «Προσάρτημα» και αποτελεί αναπόσπαστο τμήμα αυτής.

2. Τη χορήγηση εξαίρεσης στην εταιρία ΤΑΡ ΑΓ, σύμφωνα με τους ειδικότερους όρους και προϋποθέσεις του Μέρους με τίτλο «Part 4: Authorities Joint Opinion» του Προσαρτήματος.

3. Την τροποποίηση της Απόφασης 111/2013 της ΡΑΕ ως προς το Μέρος με τίτλο («Part 4: Authorities Joint Opinion») σύμφωνα με το ως προς άνω σημείο 1 αντίστοιχο Μέρος του Προσαρτήματος.

4. Την κοινοποίηση της παρούσας στην Ευρωπαϊκή Επιτροπή, σύμφωνα με τα οριζόμενα στο τρίτο εδάφιο της παραγράφου 9 του Άρθρου 36 της Οδηγίας.

5. Την κοινοποίηση της παρούσας στις Ρυθμιστικές Αρχές της Ιταλίας και της Αλβανίας, στο ΥΠΕΚΑ, το ΜΣΕ και τη Γραμματεία της Ενεργειακής Κοινότητας.

6. Την ανάρτηση της παρούσας στην ιστοσελίδα της ΡΑΕ.

Η παρούσα υπόκειται σε προσφυγή κατά τα οριζόμενα στο άρθρο 33 του Ν. 4001/11.

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TAP AG's Exemption Application

Autorità per l'energia elettrica e il gas (Italy)
Enti Rregullator I Energjise (Albania)
Ρυθμιστική Αρχή Ενέργειας (Greece)

06/06/2013

Preface

1. On 29 August 2011 and on 31 August 2011, TAP AG submitted to the Italian Ministry of Economic Development (Ministero dello Sviluppo Economico, hereinafter, "MSE") and to the Regulatory Authority for Energy of Greece (hereinafter, "RAE") respectively, an "Exemption Application for *Trans Adriatic Pipeline*" (hereinafter, "Exemption Application"), as foreseen by Article 36 of the Gas Directive 2009/73/EC.
2. On 1 September 2011, TAP AG submitted the Exemption Application to the Energy Regulatory Entity (hereinafter, "ERE") of Albania, in accordance with Article 22 of the Gas Directive 2005/54/EC.
3. On 28 February 2013, RAE, adopted Decision No 111/2013, on the "*Exemption of TAP AG from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP)*" (hereinafter, "Greek Exemption Decision"). The Greek Exemption Decision was notified to the European Commission (hereinafter, "Commission") in full on 9 March 2013.
4. On 28 February 2013, Autorità per l'energia elettrica e il gas (hereinafter "AEEG", from Italy) adopted Resolution No 78/2013/R/gas on the "*Exemption of TAP AG from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP)*."
5. On 1 March 2013, ERE, adopted Decision No 27 on the "*Exemption of TAP AG from the provisions of Articles 9, 32 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP)*" (hereinafter, "Albanian Exemption Decision"). The Albanian Exemption Decision was notified to the Secretariat of the Energy Community (hereinafter, "Secretariat") in full on 6 March 2013.
6. On 13 March 2013, the MSE adopted a specific Decree concerning the exemption of TAP AG from the provisions of Articles 9, 32, 33, 34 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP) (hereinafter, "Italian Exemption Decision"). The Italian Exemption Decision was notified to the Commission on 15 March 2013.
7. Both the Greek Exemption Decision and the Italian Exemption Decision (hereafter referred as "Exemption Decisions") were notified to the Commission together with a document entitled "*Joint Opinion of the Energy Regulators on TAP AG's Exemption Application - Autorità per l'energia elettrica e il gas(Italy), Enti Regulatori Energetici (Albania), Ρυθμιστική Αρχή Ενέργειας (Greece)*" (hereinafter, "Joint Opinion"), dated 28 February 2013, which therefore forms an integral part of the Exemption Decisions.

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8. The Albanian Exemption Decision was also notified to the Secretariat together with the Joint Opinion which therefore also forms an integral part of the Albanian Exemption Decision.
9. The Joint Opinion results from the agreement reached by the Regulatory Authorities of Italy (AEEG), Albania (ERE) and Greece (RAE) to review jointly the application and to express the result of this assessment in one single Opinion, based on the criteria of Article 36(1) of Directive 2009/73/EC, supported by the market test results and further considerations agreed among these three authorities. The MSE requested AEEG to define, jointly with the Greek and Albanian Regulatory Authorities, the procedures for the Market Test and provide an Opinion to the Ministry.

The Joint Opinion is divided in four *Parts*.

- *Part 1* provides a description of the TAP project, according to the Exemption Application submitted by TAP AG, as enriched by information communicated to the Authorities in due course of the assessment of this application until the date of issuing of the present joint opinion. The description includes the list of the exemptions requested, the Authorities provisions, the summary of the first phase of the Market Test and a report of information deemed to be relevant for the opinion.
 - *Part 2* includes some further analysis and considerations based on data acquired, such as an analysis of the impact of the project on the relevant markets and on the competition.
 - *Part 3* contains the analysis of the Authorities, on how the criteria of Article 36.1 of the Gas Directive are fulfilled, supported by data and considerations in *Part I* and *Part II*.
 - *Part 4* is the opinion of the Authorities on the Exemption Application and the terms and conditions under which the exemption should be granted.
10. On 27 February 2013 and 23 April 2013, the Commission services met with the Authorities to discuss the case.
 11. On 27 March 2013, the Commission services addressed to MSE and RAE a request for additional information, in order to allow a full assessment of the Exemption Decisions. This information was provided on 5 April 2013 (MSE ref. 0007132 05/04/2013, RAE ref. O-54607/05.04.2013). Following the state-of-play meeting with the Regulatory Authorities on 23 April 2013, and in response to additional questions raised by the Commission, the Authorities provided additional information, respectively, on 23 April 2013 (RAE ref. O-54720/23.04.2013) and 26 April 2013 (MSE ref. 8617 26/04/2013).
 12. On 2 April 2013, the Secretariat addressed to ERE a request for additional information, in order to allow a full assessment of the Exemption Decisions. This

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information was provided by ERE on 8 April 2013. Following the state-of-play meeting with the Regulatory Authorities on 23 April 2013 and in response to additional questions raised by the Secretariat further information was provided by ERE to the Secretariat on 29 April and 2 May 2013.

13. On 23 April 2013, the Greek Authority (RAE), upon the request of the Commission, agreed by common consent to extend the initial two-month period for taking an exemption decision by the Commission to 16 May 2013 (RAE ref. O-54711/23.04.2013). Consequently, the date of adoption of the Commission Exemption Decisions addressed respectively to the Italian and Greek Authorities was aligned to be 16 May 2013.
14. On 6 May 2013, the Albanian Regulatory Authority (ERE), upon the request of the Secretariat, agreed by common consent to extend the initial two-month period for the publication of the Secretariat's Opinion on the ERE's Exemption Decision (ERE Joint Opinion) to 14 May 2013. Consequently, the date of publication of the Secretariat Opinion addressed to the Albanian Authority was aligned to be 14 May 2013.
15. On 14 May 2013, the Secretariat of the Energy Community adopted its Opinion on the exemption of the Transadriatic Pipeline (N. 1/2013). This Opinion was formally communicated to the Regulatory Authority of Albania (ERE) By its decision the Secretariat of the Energy Community invited ERE to amend the conditions under points 4.1.3, 4.1.6, 4.7.7 and 4.7.8 of Part 4 of the Joint Opinion. The latter two amendments are country specific, with relevance to Albania only and are related to the obligation to expand existing and/or build additional entry and exit points in Albania and to capacity caps for dominant players in Albania.
16. On 16 May 2013, the Commission adopted its decision (C(2013)2949 final) on the exemption of the Trans Adriatic Pipeline from the requirements on third party access, tariff regulation and ownership unbundling laid down in Articles 9, 32, 41(6), 41(8) and 41(10).

By its decision the Commission requests

- the Regulatory Authority for Energy of the Hellenic Republic (RAE) to amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decision No 111/2013 of 22 February 2013 (the Greek Exemption Decision), as notified to the Commission on 9th March 2013.
- the Italian, Ministero dello Sviluppo Economico (MSE) to amend, in accordance with Article 36(9) of Directive 2009/73/EC, its Decree of 13 March 2013 concerning exemption of TAP AG from the provisions of Articles 9, 32, 33, 34 and 41(6), (8) and (10) of Directive 2009/73/EC on the Trans-Adriatic Pipeline (TAP) (the Italian Exemption Decision), as notified on 15 March 2013 to the Commission.

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17. The amendments requested by the European Commission concern Part 4 of the Joint Opinion and in particular the conditions under points 4.1, 4.1.2, 4.1.3, 4.1.5, 4.1.6, 4.1.8, 4.1.10, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7.2, 4.7.4, 4.7.5, 4.7.10 and 4.9. The amendments requested by the European Commission under points 4.7.2, 4.7.4 and 4.7.5 are country specific with relevance to Italy and Greece only as EU Member States. The amendments requested by the European Commission under points 4.1.3, 4.1.6 and 4.7.7 incorporate the suggestions of the Energy Community Secretariat.
18. For the sake of completeness, the requests of TAP AG, for exemption from the requirements of Directive 2009/73/EC as listed in §1.3.1 of the Joint Opinion, are repeated below:

1.3.1 *The requested exemptions*

TAP AG requested the following exemptions:

1. *Related to the Initial Capacity of 10 bcm/year:*

- (a) *from the requirement of TPA (Article 32 of the Gas Directive);*
- (b) *from regulated tariffs (Article 41.6, 41.8, 41.10 of the Gas Directive).*

The above exemptions are meant for a period of 25 years from the Commercial Operation Date, equivalent to the duration of the long-term contracts.

2. *In respect of the possible realization of an Expansion Capacity in Phase II:*

- (a) *from regulated tariffs (Article 41.6, 41.8, 41.10 of the Gas Directive).*

The above exemption is meant for the same period for which exemption for the Initial Capacity is applied for and granted.

3. *Irrespective of Initial or Expansion Capacity:*

- (a) *from regulated tariffs for Reverse Flow (Article 41.6, 41.8, 41.10 of the Gas Directive);*
- (b) *from the unbundling provisions of the Third Gas Directive (Article 9);*
- (c) *from the provisions of Gas Regulation (with exception of Article 19.4).*

The above exemptions are meant for a period of 25 years from the Commercial Operation Date, equivalent to the duration of the long-term contracts.

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- HAVING regard to paragraph 9 of Article 36 of Directive 2009/73/EC,
- HAVING regard to the Commission Decision [C(2013)2949 final] dated 16 May 2013 on *the exemption of the Trans Adriatic Pipeline from the requirements on third party access, tariff regulation and ownership unbundling laid down in Articles 9,32,41(6),41(8) and 41(10)*,
- HAVING taken note of the Opinion 1/2013 of the Energy Community Secretariat dated 14 May 2013.

The Regulatory Authorities of Italy, Albania and Greece, jointly agree on the modification of Part 4 of the Joint Opinion as follows.

This modified Part 4 comprises the Final Joint Opinion of the Authorities on the Exemption Application of TAP AG. All cross-references within Part 4 *to Parts 1 to 3* refer to the Joint Opinion. Terms and acronyms used in the Final Joint Opinion are as defined in pages vi-vii of the Joint Opinion

Part 4

Authorities' joint opinion

This *Part* contains the decision of the Authorities on the exemption request and the terms and conditions under which the exemption is granted.

Having regard to the assessment of the Exemption Application of TAP AG, as presented in the previous *Parts* of this document, the Authorities have the opinion that, under the specific terms and conditions detailed in the following paragraphs, an exemption from TPA should be granted for the Initial Capacity (i.e. a maximum of 50% of the Total Capacity of the Project) to the shareholders of TAP AG and to allocate the Expansion Capacity (i.e. remaining 50% or more of the Total Capacity of the Project) to the market through the Booking phase of the Market Test currently under progress and, if not allocated, in subsequent market tests. The allocation of both the Initial and the Expansion Capacity will be subject to the same capacity caps as envisaged by the Authorities in the Joint Opinion and amended in line with the Commission's decision.

With reference to each requested exemption by TAP AG as described in §1.3.1, the Authorities jointly express their opinion as follows.

4.1 Initial Capacity, forward flow: exemption from the requirement of Article 32 of the Gas Directive (TPA)

This opinion is made with reference to the request at point 1a of §1.3.1.

An exemption from the provisions of Article 32 of the Gas Directive for the Initial Capacity should be granted to TAP AG, for the forward transportation of natural gas from the actual TAP entry point in Greece to its exit point in Italy, for a period of 25 years starting from beginning of the Commercial Operation Date, subject to the following conditions:

1. *Origin of gas* – The Initial Capacity will be dedicated to the transportation of gas volumes to be procured by Shah Deniz II gas, according to the business plan of TAP AG, as included in the Exemption Application. Any deviation from this principle will not be possible without prior approval by the Authorities.

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2. *Initial allocation* – As requested by TAP AG, the Initial Capacity will be allocated to the shareholders of TAP AG at the time of granting this opinion (Shareholders as for §1.2.1, i.e. Statoil ASA (42,5%) Apxo E.On Ruhrgas AG (15%), hereinafter “Current Shareholders”), in proportion to their shares in TAP AG.
3. *Legal procedure of transferring the Initial Capacity* – Any buyer of Shah Deniz II gas, or any shipper on his behalf, shall be entitled to such part of the Initial Capacity that corresponds to its share in the Shah Deniz II gas quantities to be transported through TAP. To this end, once the Shah Deniz Consortium announces its final decision regarding the buyers of the quantities of Shah Deniz II gas to be transported through TAP, the current Shareholders of TAP AG will undertake all appropriate legal actions to transfer¹, in part or as a whole, as the case may be, the capacity rights and obligations allocated to them under point 2 above, to those buyers (or their nominated shippers), upon a request of the latter. Within three months from the date that the present decision becomes effective, according to the provisions of the Directive 2009/73/EC, TAP AG will submit for approval to the Authorities, or the national competent authorities, as the case might be under the relevant national legislation, a proposal for the legal procedure under which this transfer of capacity will be implemented. The legal procedure will ensure that transfers are made based on equal terms and conditions for all buyers of Shah Deniz II gas. The Authorities, or the national competent authorities as the case might be, will decide on the legal procedure described above within one month from the date of the submission of the relevant proposal by TAP AG. The approval of the Authorities, or the national competent authorities as the case might be, is deemed granted, if, upon expiration of the deadline above, no decision has been issued. Upon approval of this procedure, subject to provisions of points 2, 6 and 9 of §4.7, the transfer of capacity will be implemented within a month from the date that a final shipper of Shah Deniz II gas will so require from TAP AG.
4. *Final Allocation of Initial Capacity to Shah Deniz II gas buyers and release of Residual Initial Capacity to the Market* – Immediately after the conclusion of the procedure above, TAP AG will inform the Authorities on the part of the Initial Capacity finally allocated for the transportation of Shah Deniz II gas volumes, the final list of buyers and their shippers and the amount of capacity allocated to each.

In case that the part of the Initial Capacity allocated for the transportation of Shah Deniz II gas volumes is less than 10 bcm/year, the remaining part up to 10 bcm/year (hereinafter referred to as Residual Initial Capacity) will be made available to the market through the first Booking phase according to the provisions of points 5 and 6.
5. *Obligation to perform the first Booking phase and to build the capacity requested* – No later than three months from the date of the Final Investment Decision, TAP AG will proceed with the second phase of the Market Test as per the Guidelines

¹According to TAP AG letter as for §1.4.6.

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(i.e. the Booking phase). In this first Booking phase, the Expansion Capacity plus the Residual Initial Capacity will be allocated through auctions and in accordance to the provisions of points 2, 6 and 9 of §4.7. The products offered must be consistent with the result of the Expression of Interest phase, i.e. of different duration, including a duration of less than 25 years, down to at least 5 years to be defined in line with methods similar to those applicable to non-exempted capacity. The guidelines of this first Booking phase have to be approved by Authorities. TAP AG will ensure that any capacity reserved as a result of the Booking Phase will be built and become available to the corresponding shippers not later than 6 months from the Commercial Operation Date of the TAP pipeline.

6. *Participation in the first Booking phase* – All participants to the Expression of Interest phase are allowed to participate to this first Booking phase subject to the same capacity caps as envisaged by the Authorities in the Joint Opinion (as amended in line with the present Commission Decision and Secretariat opinion).

TSOs from Albania, Greece and Italy can participate to this first Booking phase, irrespective of their participation in the Expression of Interest phase on the same conditions applying to all other participants of the Expression of Interest phase. TSO participating must have been certified in accordance with each participating country's obligations under Directive 2009/73/EC, and may not use the capacity booked for gas supply.

7. *Obligation to perform subsequent market tests* – TAP AG is obliged to perform other Market Tests on a regular basis starting from no later than the Commercial Operations Date and, subsequently, at least every two years. TAP AG will perform the Market Tests, under guidelines to be approved by the Authorities, with the view to offer to all interested parties additional available capacity up to the Total Capacity.
8. *Obligation to build Expansion Capacity* – In order to fulfil the binding capacity requests resulting from each market test described in point 7, TAP AG will extend the capacity of the pipeline. TAP AG is obliged to build additional capacity, above the Initial Capacity, in order to accommodate the binding capacity requests resulting from each market test taking into account the provisions of points 2, 6 and 9 of §4.7. TAP AG shall enter into a binding agreement to have the requested capacity constructed no later than 2 months following the closing date of the market test. If TAP AG considers that, in spite of such binding capacity requests, a pipeline expansion is not economically viable, TAP AG is obliged to demonstrate this situation to the Authorities within one month following the closing date of the market test. If so requested by the Authorities, TAP will provide an opinion by a third, independent party. In case such an Opinion is requested by the Authorities, the one month deadline is extended by two months. The Authorities will decide upon the economic viability of a pipe line expansion within one month after receipt of TAP AG's submission or receipt of the opinion from an independent third party,

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as the case may be. TAP AG shall enter into a binding agreement to have the Expansion Capacity constructed no later than 2 month after the Authorities have deemed its construction economically viable. The expansion is economically viable if the incremental revenues from capacity resulting from each market test is equal or larger than the efficient incremental costs, quantified according to the TAP methodology as laid down in the TAP Tariff Code. To the extent that (in accordance with Article 4 of the present Decision) the TAP Tariff Code will remunerate TAP AG differently for Initial Capacity and Expansion Capacity, proper account will be taken in the TAP Tariff Code to ensure that the test for deciding whether construction of the Expansion Capacity is economically viable is unaffected.

9. *Possibility to further expand capacity* – Expansion beyond the Total Capacity, i.e. beyond 20 bcm/year, shall be investigated by TAP AG and if economically and technically feasible, it will be undertaken, with a view to fulfill all requests for long-term capacity (long-term means here a duration of more than 15 years).
10. *Obligation to offer short-term products* – For the whole duration of the exemption, TAP AG makes available to the market short term products (with a duration of up to one year) of a volume that, cumulatively, at least amounts to:
 - 5% of the Initial Capacity, and
 - 10% of the actually built Expansion Capacity;

The capacity shall be offered by methods similar to those applicable to short-term products offered on non-exempted capacity.

4.2 Initial Capacity, forward flow: exemption from the requirements of Article 41.6, 41.8 and 41.10 of the Gas Directive (regulated tariffs)

This opinion is made with reference to the request at point 1b of §1.3.1.

An exemption from the provisions of Article 41.6, 41.8, 41.10 should be granted to TAP AG for a period of 25 years starting from the beginning of the Commercial Operation Date, under the following conditions:

1. At the latest three months after the present decision becomes effective, according to the provisions of the Directive 2009/73/EC, TAP AG will submit for the approval of the Authorities the final methodology for the implementation of the TAP Tariff. The TAP Tariff will reflect efficient costs, it will be transparent and non-discriminatory and will follow the principles described in the Exemption Application (*TAP Tariff Code*). The methodology will define the pricing mechanism for all forward capacity products offered by TAP, namely capacity products of different durations of firm and interruptible nature, for different entry and exit

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points. The methodology will be such that for any further capacity product offered additional to the initial forward capacity, the TAP Tariff will be reduced. The Authorities in deciding on the final tariff structure, when approving the Tariff Code for TAP pipeline, will properly take into account and reflect them in the accepted tariff, the relevant different risk levels attached to TAP's investments in the Initial and Expansion Capacity. The Authorities shall monitor regularly if the TAP Tariff complies with the approved methodology. TAP shall cooperate with the Authorities in performing this task.

2. TAP AG will ensure that balancing services' charges, when applicable, will be objective, transparent, cost reflective and non-discriminatory and will be published.

4.3 Expansion Capacity forward flow: exemption from the requirements of Article 41.6, 41.8 and 41.10 of the Gas Directive (regulated tariffs)

This opinion is made with reference to the request at point 2a of §1.3.1.

An exemption from the provisions of Article 41.6, 41.8, 41.10 should be granted to TAP AG for a period of 25 years starting from the beginning of the Commercial Operation Date, with the following meaning and limitations:

1. capacity products will be offered through auctions, as a result of a Market Test, as described in point 7 of §4.1;
2. each product (different duration and/or entry or exit point) is priced separately;
3. for each product offered, the reserve price of the auction will be set equal to TAP Tariff, according to the TAP Tariff Code and the provisions of point 1 of §4.2;
4. users of the Expansion Capacity pay the price set in the item 3 above plus the premium resulting from the auction;
5. such premium will be allocated according to the provisions of point 10 of §4.7.

4.4 Reverse flow: exemption from the requirements of Article 41.6, 41.8 and 41.10 of the Gas Directive (regulated tariffs)

This opinion is made with reference to the request at point 3a of §1.3.1.

Following the analysis of §3.2.1 on the negative effect any exemption from the provisions of Article 41.6, 41.8, 41.10 of the Gas Directive on reverse flow might have on competition, the request for exemption for reverse flow products is rejected.

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Reverse flow will be regulated, according to the provisions of the European legislation in place, with the following additional restrictions:

1. Reverse Flow capacity products will be offered through auctions in the Booking phase of the Market Test and in any subsequent market tests, as described in points 5 and 7 of §4.1;
2. the tariff for a reverse flow product cannot be higher than 5% of the tariff of an equivalent forward flow product. Tariffs for the reverse flow will be approved by the Authorities as part of the TAP Tariff Code referred to in point 1 of §4.3 and can be revised following the provisions of Article 41 of the Gas Directive and any secondary legislation that may result from the provisions of the Gas Regulation;
3. the reserve price of each reverse flow product in the auction, will be set equal to the applicable tariff of that product;
4. users of the reverse flow capacity pay the price set in item 3 above plus the premium resulting from the auction.
5. the revenues from such premiums paid by the reverse flow capacity users will be allocated according to the provisions of point 10 of §4.7;
6. TAP AG will ensure that at least 5 bcm/y capacity is provided for physical reverse flows for emergency operations;
7. TAP AG will ensure that at least 5 bcm/y capacity is provided for reverse flows for commercial operations.

4.5 Exemption from requirement of Article 9 of the Gas Directive (Unbundling)

This opinion is made with reference to the request at point 3b of §1.3.1.

An exemption from the provisions of Article 9.1 of the Gas Directive is granted to TAP AG for a period of 25 years starting from the Commercial Operation Date and subject to the following conditions:

1. TAP AG, prior to allocating capacity as a result of the first Booking Phase has to implement functional unbundling. To this end, TAP AG shall establish and submit to the Authorities for their approval, a Compliance Programme, which sets out measures taken to ensure that discriminatory conduct is excluded and that, no commercially sensitive information is communicated to its shareholders. The Compliance Programme should be submitted to the Authorities not later than 6 months after the adoption of the Commission Decision. The Compliance Officer should be appointed not later than 1 month from the approval of the Compliance Programme by the Authorities. This Compliance Programme shall lay down at least the following:

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- (i) Measures to prevent discriminatory conduct in relation to the participants in the first Booking Phase of the market test, who are not shareholders in TAP AG.
 - (ii) The duties and the rights of the employees of TAP AG in the fulfilment of the purposes of the Compliance Programme.
 - (iii) The person or body responsible for monitoring the Compliance Programme and submitting to the Authorities an Annual Compliance Report, setting out the measures taken.
 - (iv) The principles of the tariff methodology and the congestion management rules that were to be applied to the marketing of capacity by TAP AG
2. TAP AG should be required to be fully certified before the start of the construction of the pipeline, and not later than 1 January 2018. To this end, TAP AG will apply for certification in accordance with Article 10 or 11 of the Gas Directive, as the case may be, with the view to safeguard the degree of independence of the top and executive management of TAP AG from its shareholders. Therefore TAP AG will need to be certified in each Member State, which territory it crosses. Regulatory Authorities of Greece and Italy will need to assess in their certification decisions the compliance of TAP AG with the unbundling rules prescribed in the Exemption Decision. To this end, the certification application will be based on an independent transmission operator model. TAP should comply with all conditions set out in Chapter IV of the Gas Directive apart from Article 22 of the Gas Directive. These conditions should include, among others as specified in Chapter IV of the Gas Directive, the following provisions:
- (i) The top and executive management of TAP AG will not participate in any company structures of the shareholders of TAP AG responsible for the day-to-day production and supply of gas.
 - (ii) Evidence that the professional interests of persons responsible for the management of TAP AG are taken into account in a manner that ensures that they are capable of acting independently.
 - (iii) All the financial supervision rights allowed under legal and functional unbundling shall be charged to a Supervisory Body. The Supervisory Body shall be in charge of taking decisions that may have a significant impact on the value of the assets of the shareholders within TAP AG. This includes the decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of TAP AG and the amount of dividends distributed to shareholders. However, the Supervisory Body cannot interfere with the day-to-day activities of TAP AG and the operation of TAP pipeline.
 - (iv) Evidence that TAP AG has the necessary resources, including human, technical, physical and financial to have effective decision-making rights.
 - (v) Evidence that TAP AG will have a Compliance Programme in place, which is adequately monitored by a compliance officer employed by TAP AG.

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3. TAP AG is not compelled to comply with Article 22 of the Gas Directive, since the scope of the provisions of Article 22 of the Gas Directive are sufficiently addressed by the in-depth assessment of the Authorities and by the conditions and time limits which are imposed by this Joint Opinion.

4.6 Exemption from the provisions of Gas Regulation (with exception of Article 19.4)

This opinion is made with reference to the request at point 3c of §1.3.1.

According to the provisions of Article 30 of the Gas Regulation, it would be possible to grant the requested exemption to fully exempted infrastructure. As TAP is not fully exempted, the Authorities believe that an exemption from all the provisions of the Gas Regulation is not justified, since this might have a negative impact on the transparency of access to the pipeline, as well as on the operation of the regulated systems to which TAP will be connected. On the other hand, the implementation of some of the provisions of the Gas Regulation and the rules to be put in force following such provisions might have a negative impact on the implementation of the present decision. To this end, TAP AG will have to comply with the provisions of Gas Regulation, as long as they are not in conflict with the provisions of the exemption decision, in the way described under point 1 of §4.7

4.7 Additional Terms to safeguard full compliance to the criteria of Article 36.1

1. *Obligation to issue the Network Code* – No later than 12 months prior to its Commercial Operation Date, TAP AG will submit for approval to the Authorities a *TAP Network Code*. The Network Code shall be compatible with all provisions of Regulation 715/2009 and of the European Network Codes of Article 8.6 of Regulation 715/2009 that are not in conflict with the terms of the present decision. To this end, once each European Network Code becomes binding or it is modified, TAP AG will submit to the Authorities for their approval, a revision of TAP Network Code, which will incorporate those provisions of such European Network Code that are not in conflict with the present decision. The TAP Network Code will be published on the TAP AG website.

The TAP Network Code will be published on the TAP AG website, and should, at least, include the following:

- Detailed procedures for normal operations, including nomination of capacity at all entry and exit points of TAP, for forward and reverse flow;
- All procedures necessary for the secondary trading, including a so-called “electronic-bulletin board”, which will be available to all shippers;

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- Congestion Management Procedures and use-it-or-lose-it arrangements;
 - Procedures for the publication of data regarding the operation and the availability of capacity to all users of the pipeline;
 - A declaration by TAP AG that sanctioned gas² will not be imported or transported through any part of the TAP project.
2. *Pro-competitive measures for the Italian market* – In view of the current gas market structure in Italy (described in §2.2.1.3), it is fundamental not to hamper the positive effects on competition expected from the investment in case an undertaking with significant market power were to reserve TAP import capacity on a long term basis either subletting TAP exempted capacity or booking the available capacity through auctions. Against such risks, the Italian legislation provides for a legal mechanism ensuring an ex-ante check in case of changes in relevant rights. Namely, in case of transfer of exempted capacity to third parties, the Decree of Ministero delle attività produttive of April 11th, 2006³ obliges the importers to obtain the Ministry's prior authorization. Additionally, a relevant request for confirmation of the granted exemption is to be addressed to the Ministry in case of variations of the conditions on which the exemption decision is based, including, inter alia, any change of the identity of the exemption's beneficiaries⁴. The above mentioned authorization shall be granted only if changes in relevant rights do not negatively affect competition and the functioning of the Italian gas market.
3. *Capacity caps for dominant players in Italy* – For the prevention of the development of a dominant market positions or the reinforcement of existing dominant positions in the Italian gas market, without prejudice of requirements established by Article 2 of the Italian decree dated March 13th 2013, the following conditions shall also apply:
- (i) Any undertaking with a share of 40% or larger in any relevant product market for the supply of gas in Italy, or on the upstream market of supplying gas for Italy, shall not be allowed to reserve more than 50% of the capacity on the TAP exit point in Italy.
 - (ii) In the event that two or more undertakings together hold a market share of at least 80% and each of these undertakings have a market share of more than 20% in any relevant product market for the supply of gas in Italy, or on the upstream market of supplying gas for Italy, AEEG will have the right to impose a capacity cap on these undertakings on the TAP exit point in Italy.
 - (iii) Where, due to lack of interest by other parties, the capacity caps in (i) and (ii) above prevent the expansion of the pipeline or causes existing capacity

²Sanctioned Gas is natural gas whose import prohibition is defined by Article 9 of the COUNCIL REGULATION (EU) No 1263/2012 of 21 December 2012 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran.

³See article 8 of the Ministry Decree

⁴See Article 7 of the Ministry Decree

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to remain idle, a derogation from the capacity caps of (i) and (ii) shall apply on the condition that the undertaking(s) concerned offer to the market the entire volume of gas in excess of the capacity that the undertaking(s) hold in an open, transparent and non-discriminatory procedure. The gas volume release shall be followed by a corresponding capacity release. The gas volume release and the capacity release will be subject to a procedure approved by AEEG.

- (iv) For the calculation of the market share and the percentage of the capacity cap, undertakings belonging to the same group of companies shall be considered together. The market share shall be calculated as the average of the last two consecutive years.
 - (v) Only in case the imposition of the gas and capacity release will give rise to a situation where the undertaking(s) concerned has/ve no incentives to utilise the capacity above the capacity cap imposed, on request of the undertaking concerned or on its own initiative, AEEG can provide a temporary derogation to provide for the gas and capacity release. Such derogation shall be subject to other conditions that maintain the competition enhancing effects of the investment for competition. Such a derogation is given by the Regulatory authority, after consulting the National Competition authority.
4. *Connection with Greek system* – Following cooperation with DESFA, TAP AG will implement and put in operation from the commercial operation date of TAP, one or more connection with the existing Greek National Transmission System (ESFA), owned and operated by DESFA, other than the Entry Point of TAP. These new connection point(s) will have technical capability for bidirectional flow and a capacity of not less than 10 mcm/day for each connection point in both directions. All costs related to the expansion and/or construction and operation of these connection point(s) to the ESFA will be entirely borne by DESFA and incorporated into the tariffs of ESFA, as defined in the relevant Greek legislation. In defining the final capacity of such interconnections, as well as their exact location, TAP AG and DESFA may perform a relevant market test, following the approval of RAE. For the avoidance of doubt, the availability of such connection capacity is not linked to the available capacity of TAP, nor does it imply an obligation of TAP to build additional capacity other than the one resulting from §4.1 above. In addition, costs related to such connection points will not include the investments required for additional capacity resulting from §4.1, which, in any case, will be remunerated through TAP Tariffs.
5. *Obligation to build additional entry and exit points in Greece* – TAP AG will have the obligation, upon request of a third party, as a result of any market test, to construct additional entry and exit points in the territory of Greece, as long as such construction is technically feasible. TAP AG shall enter into a binding agreement to have the additional entry and exit points in Greece constructed no later than

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2 month following the closing date of the market test. The burden of proof to demonstrate that the construction of such additional entry and exit point is not technically feasible rests with TAP AG. If so requested by the Authorities, TAP AG is to provide an Opinion from an independent third party. If TAP AG seeks to demonstrate that the construction of additional entry and exit points is not technically feasible, TAP AG will do so within one month after the closing of the market test, a period that can be extended with an additional two months if the Authorities request an opinion from an independent third party. The Authorities will decide upon TAP AG's request within one month after TAP AG's request or the receipt of the opinion from an independent third party, as the case may be. TAP AG will enter into a binding agreement for the construction of the additional entry and exist points no later than 2 months after the Authorities deem their construction technically feasible. All costs related to the construction and operation of such entry and exit points will be borne by the third party who made the request, according to the national legislation in place at the time of the request. Costs related to such entry and exit points will not include the investments required for additional capacity of TAP, resulting from §4.1, which will be remunerated through TAP Tariffs.

6. *Capacity caps for dominant players in Greece* – For the prevention of the development of a dominant market position or the reinforcement of existing dominant positions in the Greek gas market, the following conditions shall apply:
- (i) any undertaking with a share of 40% or larger in any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas for Greece, shall not be allowed to reserve more than 50% of the capacity on any of the TAP exit points referred to in points 4 and 5 above;
 - (ii) in the event that two or more undertakings together hold a market share of at least 80% and each of these undertakings have a market share of more than 20% in any relevant product market for the supply of gas in Greece, or on the upstream market of supplying gas for Greece, RAE will have the right to impose a capacity cap on these undertakings on any of the TAP exit points referred to in points 4 and 5 above;
 - (iii) TAP AG will inform RAE immediately of the results of the market test of point 4 above, or for the request of the third party of point 5 above, so that RAE can express its preliminary or final opposition, according to the points (i) and (ii) above;
 - (iv) where, due to lack of interest by other parties, the capacity caps in (i) and (ii) above prevent the expansion of the pipeline or causes existing capacity to remain idle, a derogation from the capacity caps of (i) and (ii) shall apply on the condition that the undertaking(s) concerned offer the entire volume of gas in excess of the capacity that the undertaking(s) hold in excess in an open, transparent and non-discriminatory procedure. The gas volume release shall

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be followed by a corresponding capacity release. The gas volume release and the capacity release will be subject to a procedure to be approved by RAE;

- (v) for the calculation of the market share and the percentage of the capacity cap, undertakings belonging to the same group of companies shall be considered together. The market share will be calculated as the average of the last two consecutive years. In case of the construction of new exit points referred to in points 3 and 4 above, due account shall be given to the prospective effects thereof on the market share of the undertakings concerned;
- (vi) only in case the imposition of the gas and capacity release will give rise to a situation where the undertaking(s) concerned has/ve no incentives to utilise the capacity above the capacity cap imposed, on request of the undertaking concerned or on its own initiative, RAE can provide a temporary derogation to provide for the gas and capacity release. Such derogation shall be subject to other conditions that maintain the competition enhancing effects of the investment for competition. Such a derogation is given by the Regulatory authority, after consulting the National Competition authority.

7. *Obligation to build exit points in Albania* – Following co-operation with the Albanian Authorities, TAP AG will construct and operate from its commercial operation date, at least one exit point in the territory of Albania, near the city of Fier or as otherwise agreed with the Albanian Authorities, with a minimum technical capacity of 2 mcm/day, bidirectional and expandable to a maximum of 10 mcm/day.

TAP AG shall enter into a binding agreement to have the additional entry and exit points in Albania constructed no later than 2 months following the closing date of the market test. The burden of proof to demonstrate that the construction of such additional exit point is not technically feasible rests with TAP AG. If so requested by the Authorities, TAP AG is to provide an Opinion from an independent third party. If TAP AG seeks to demonstrate that the construction of additional entry and exit points is not technically feasible, TAP AG will do so within one month after the closing of the market test, a period that can be extended with additional two months if the Authorities request an opinion from an independent third party. The Authorities will decide upon TAP AG's request within one month after TAP AG's request or the receipt of the opinion from an independent third party, as the case may be. TAP AG will enter into a binding agreement for the construction of the additional entry and exit points no later than two months after the Authorities deem their construction technically feasible.

All costs related to the construction and operation of this connection will be borne by an entity indicated by the Albanian Authorities. For the avoidance of doubt, the availability of such connection capacity is not linked to the available capacity of TAP, nor does it imply an obligation of TAP to build additional capacity other than the one resulting from §4.1 above. In addition, costs related to such connection

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points will not include the investments required for additional capacity resulting from §4.1, which, in any case, will be remunerated through TAP Tariffs.

8. *Obligation to expand existing and/or build additional entry and exit points in Albania* – TAP AG will have the obligation, upon request of a third party, as a result of any market test, to expand existing and/or construct additional entry and exit points in the territory of Albania, as long as such construction is technically feasible. All costs related to the construction and operation of such entry and exit points will be borne by the third party who made the request, according to the national legislation in place at the time of the request. Costs related to such entry and exit points will not include the investments required for additional capacity of TAP, resulting from §4.1, which will be remunerated through TAP Tariffs.
9. *Capacity caps for dominant players in Albania* – For the prevention of the development of a dominant market position in the Albanian gas market, the following conditions shall apply:
 - (i) No gas supplier may hold more than 80% of the transportation capacity of the TAP exit points in Albania referred to in points 7 and 8 above, for the initial 10 years from the date when such exit points of TAP in Albania are put in operation. Following this initial period of 10 years, ERE (or the corresponding national authorities according to the national legislation) will decide on how this maximum percentage will decrease.
 - (ii) TAP AG will inform ERE in good time of any request of a third party, as referred to in points 7 and 8 above, so that ERE can express its preliminary or final opposition, according to the point (i) above.
 - (iii) Where due to lack of interest by other parties, the capacity cap in point (i) above prevent the expansion of the pipeline or causes existing capacity to remain idle, a derogation from the capacity cap of (i) apply on the condition that the undertaking(s) concerned shall offer the volume of gas relating to the capacity it/they hold in excess of the cap to the market in an open, transparent and non-discriminatory procedure. The gas volume release shall be followed by a corresponding capacity release following a procedure to be approved by ERE.
 - (iv) For the calculation of the market share and the percentage of the capacity cap, undertakings belonging to the same group of companies shall be considered together.
 - (v) Shippers on the TAP pipeline shall not sell more than 50% of the total amount of gas supplied through the exit point(s) in Albania to one undertaking buying gas for the markets in Albania, for the first five years after the start of operations of an exit point in Albania. For the calculation of this cap, undertakings under the control of the same entity shall be considered together. Where there is no sufficient interest by other buyers for gas volumes exceeding

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this cap, a derogation from the gas volume cap shall apply on condition that the undertaking concerned has offered the volume of gas in excess of the 50% cap to the Albanian markets in an open, transparent and non-discriminatory procedure which is subject to the approval of the regulatory authority. After the expiry of the five years, ERE may design and impose a gas release program on dominant companies to the extent needed to establish or protect competition.

10. *Auctions revenues* – Any extra revenue beyond the reserve price, from the auction procedures as for §4.3 and §4.4 is transferred by TAP AG to a special fund which will be at the disposal of Authorities to be redistributed to final customers. The procedures of such mechanism will be defined by Authorities by the date of TAP AG commercial operation.
11. *Changing in TAP shareholding* – If, directly or indirectly, an undertaking acquires joint or sole control over or merges with TAP AG or one of its shareholders, TAP AG must notify this change to each of the relevant national authorities concerned which must then assess (if deemed necessary in cooperation with a national competition authority) whether the conditions under which the exemption was granted are still met.

The provision will be applied in accordance with Article 3 of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) and the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01)

4.8 Governance

1. *Regulatory Cooperation* – Where the present opinion foresees an action by the Authorities, for the purpose of the implementation of such an action, the Authorities shall endeavor all efforts to act jointly.
2. *Dispute settlement* – Within 6 (six) months prior to the Commercial Operation Date of the TAP pipeline, the Authorities shall issue a joint decision on the settlement of disputes in relation to this joint decision which may arise during the operation of TAP.

4.9 Violation of the provisions of the present decision

1. Any infringement by TAP AG of the conditions set in the present joint exemption opinion, may result in a penalty imposed on TAP AG by the Authorities to be determined in accordance to national law and procedures.

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2. Serious violation by TAP AG of the conditions set in the present Joint Opinion may result in withdrawal by the authorities of the exemptions provided by this Joint Opinion

4.10 Commercial Operation Date and Effect of the Joint Opinion

1. *Commercial Date of Operation* – TAP shall be put into operation no later than 1 January 2019.
2. *Effect of the present exemption* – In line with the provisions of Article 36(9) of Directive 2009/73/EC, the present Opinion and the Commission's approval shall lose its effect 3 years from its adoption in the event that construction of TAP has not yet started, and 6 years from its adoption in the event that the infrastructure has not become operational, unless the Commission decides that any further delay is due to major obstacles beyond control of the person to whom the exemption has been granted.

Η απόφαση αυτή να δημοσιευθεί στην Εφημερίδα της Κυβερνήσεως.

Αθήνα, 12 Ιουνίου 2013

Ο Πρόεδρος
ΝΙΚΟΣ ΒΑΣΙΛΑΚΟΣ



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ΑΠΟ ΤΟ ΕΘΝΙΚΟ ΤΥΠΟΓΡΑΦΕΙΟ

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